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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,674	09/18/2003	George Benesh	23-0355	6272

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EXAMINER

CULBRETH, ERIC D

ART UNIT PAPER NUMBER

3616

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,674	Applicant(s) BENESH, GEORGE	
	Examiner Eric Culbreth	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/18/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- a. 10 (page 4, line 18 and the remainder of the specification);
- b. 2 (page 4, line 23);
- c. 4 (page 4, line 23 and the remainder of the specification);
- d. 14 (page 4, line 26 and remainder of the specification);
- e. 18 (page 4, line 29 and the remainder of the specification). Corrected

drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because of the following informalities. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office

action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

- a. The disclosure of page 5, lines 6-10 is not illustrated to the degree necessary for understanding (missing reference numerals, no interconnection shown).
- b. Generally, Figure 2 is not illustrated well (missing reference numerals, no interconnection).
- c. Comparing the disclosure to Figure 2, the disclosure at page 5, lines 15-20 appears reversed (tube 34 enters chamber 32 first, not chamber 38).
- d. Figure 2 is not clear regarding part 42 because reference numeral 42 appears twice in the figure.

e. In Figure 2, it is not clear exactly what part of the illustrated structure is column 36 (the lead line for the reference numeral does not touch a part, and the arrow seems to point to the structure in general).

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for claim 4's recitation of a resistance measuring means positioned adjacent the exit opening for measuring electrical resistance of a fluid passing through the opening.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The locking means physically preventing turning of a key is not illustrated or disclosed to the degree to allow enablement (claims 1-2). The recitation in claim 4 of a

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carrier-gas flow controller coupled to the inlet tube for regulating flow of exhaled breath through the sensor assembly is not recognized from the disclosure (i.e. what part of the disclosed invention is this?).

As the invention already has sensors 46, it is not clear what purpose chromatography column 36 serves.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The preambles of claims 1-6 recite the invention as an alcohol and drug sensor system, but there is no other drug besides alcohol disclosed as sensed.

b. In claim 4 it appears inaccurate to recite the column as having an exit opening, as the opening is in silicone wafer 44.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1 as best understood is rejected under 35 U.S.C. 102(b) as being anticipated by Nawata et al (US005531225A).

Nawata et al discloses an alcohol and drug sensor system inasmuch as applicant's invention comprising main tube 10a coupled to the vehicle such that it is accessible to the user while in the driver's position in the vehicle and a sensor assembly 222 operationally coupled to the main tube for detecting alcohol in the breath when the user blows into the tube. A CPU or microprocessor 21 is operationally coupled to the sensor (20 in Figure 6), and an ignition system 270 in Figure 23 is coupled to the microprocessor such that the ignition system cannot be activated until the user has blown into the tube. The microprocessor 230, 240 in Figure 23 prevents activation of the ignition system when a level of alcohol is over a predetermined level. The microprocessor in Figure 23 activates a relay 272 to permit the ignition system to start when the alcohol level is below a predetermined level.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claim 2 as best understood is rejected under 35 U.S.C. 103(a) as being unpatentable over Nawata et al.

When the alcohol level in the sample is above a predetermined level, Nawata et al uses the relay 272 to close the circuit instead of physically locking the ignition key against turning. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Nawata et al to include locking means physically preventing turning of the ignition key in order to prevent the car from being started using an alternative equivalent structure in the art, as locking means preventing keys from being turned are notorious in the art when it is desired to prevent the car from being started (i.e., when the steering wheel is turned after the ignition is turned off, or when it is attempted to start the car if it is not in park or neutral; the examiner takes judicial notice that such locking means are used to prevent the ignition key from being turned on a 2000 Honda Accord).

Allowable Subject Matter

12. Claims 3-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miyamoto et al (US Patent 4,039,852) shows a driver circuit 34 for activating an ignition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eric Culbreth
Primary Examiner
Art Unit 3616